

Panaji, 16th June, 1988 (Jyaistha 27, 1910)

SERIES II No. 11

# OFFICIAL GAZETTE



## GOVERNMENT OF GOA

### GOVERNMENT OF GOA

#### Department of Personnel

##### Order

No. 3/13/85-PER (Vol. IV)

Read: Government Order No. 3/13/85-PER (Vol. IV) dated 25-5-88.

In partial modification of para 2 of the Government order read above, Smt. Shailaja Chandra, Resident Commissioner shall hold the charge of the post of Development Commissioner with effect from 3-6-88 in addition to her own duties, until further orders.

By order and in the name of the Governor of Goa.

Smt. Prabha Chandran, Under Secretary (Personnel).

Panaji, 7th June, 1988.

### Home (General) Department

##### Order

No. 3/12/80-HD(G)

Read: i) Government order No. 3/12/83-HD(G) dated 9-9-1983.

ii) Government order No. 3/12/83-HD(G) dated 4-10-1983.

In supersession of Government Order No. 3/12/80-HD(G) dated 15-2-1988, Government is pleased to redesignate the post of Chief Fire Officer as 'Director of Fire and Emergency Services' with immediate effect.

By order and in the name of the Governor of Goa.

A. T. Kamat, Under Secretary (Home).

Panaji, 7th June, 1988.

### Department of Labour

##### Order

No. 28/36/84-ILD

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Dispute Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.

Subhash V. Elekar, Under Secretary (Industries and Labour).

Panaji, 4th February, 1988.

### IN THE INDUSTRIAL TRIBUNAL

Government of Goa

Panaji Goa.

(Before Shri S. V. Nevagi, Hon'ble Presiding Officer)

Reference No. IT/60/84

Workmen

— Workmen/Party I

V/s.

M/s. Nav-Gomantak Prakashan Daily Rashtramat.

— Employer/Party II

Workmen/Party No. I represented by Shri Subhas Naik, Secretary, Goa Trade & Commercial Workers Union.

Employer/Party No. II represented by Adv. L. Talaulikar.

Panaji: Dated: 30-1-1988.

### AWARD

This is a reference made by the Government of Goa, by its order No. 28/36/84-ILD dated 4th December, 1984 with an annexure scheduled thereto which reads as follows:

### SCHEDULE

"Whether the action of the management of M/s. Nav-Gomantak Prakashan, Daily Rashtramat, Margao-Goa in non-payment of 4.16 Ex-gratia grant to Shri Babli Vernekar for the accounting year 1982-83 is legal and justified.

If not, to what relief the workman is entitled to?"

2. The claim was registered and notices were issued to the parties returnable on 4-1-1985. The Party I/Workman Shri Babli Vernekar filed his written statement which is a statement of claim dated 4-1-1985. To this, the Opponent filed the written statement which is dated 18-1-1985. In order to contradict the things stated by the employer the Party I/Workman filed his rejoinder dated 8-2-85. After going through these pleadings and after considering the objection that the employer/Opponent while filing the written statement had not verified the same under a verification my Predecessor framed a preliminary issue besides the issue under reference reading thus:

"Whether the Workman proves that the Written Statement filed by the Employer requires verification?"

3. It appears that the matter was not pursued further in as much as the delayed verification filed by the employer dated 11-3-85 is fixed below the statement dated 18-1-1985. Be it so as it may, the matter ends there only and the parties went on trial and the matter was heard only on the point of reference in the schedule made by the Government. The point at issue is very short and before going through the pleadings of the parties and their respective pleadings, I shall enumerate the facts touching this issue only.

4. The Party II is M/s. Nav-Gomantak Prakashan, which publishes a daily from Margao by name 'Rashtramat'. The management of this publishing body came with an agreement and understanding with the Labour Union regarding the payment of Bonus and ex-gratia payment for the year 1982-83. The management acceded to the demand of Bonus and ex-gratia at the end of a settlement with the Union arrived at between the Union and the management sometime

in January, 1984 and the management actually took the decision for paying the Bonus by an order dated 28th Feb., 1984. By his order the Managing Director directed that "as was done last year ex-gratia payment at 4.16 per cent may be made as incentive to those who are on the rolls on 31-12-1983 on a convenient day before March, '84 or any earlier date subject to availability of funds". Hence by virtue of this order the management in principle acceded to the payment of ex-gratia to the workers who were on its rolls on 31-12-1983. In pursuance of this agreement and the directions of the Managing Director the management in fact paid the ex-gratia to all its workers who were on its roll on 31-12-1983 and this ex-gratia payment was for the year 1981-82 and 1982-83. These are all admitted facts.

5. The bone of contention between the parties, however, is regarding ex-gratia to be paid to Party I/Workman Shri Babli Vernekar for the accounting year 1982-83. The workman Babli Vernekar was paid the Bonus for this year @ 8.33 percent but the ex-gratia at 4.16 percent was not paid to him by the management on the simple ground that he retired from the services from August, 1983 and the ex-gratia was payable to the workers who were on the roll of the concern on 31-12-83 (vide Exb.E-1 colly). According to the management since this worker had retired way back in August, '83 he was not entitled to the ex-gratia payment for the year 1982-83 because he was not in service. This view of the management was not acceptable to the Union which raised an Industrial Dispute and took the matter to the Labour Commissioner and upon the failure of the conciliation proceedings the Government made a report together with the schedule for consideration of this Tribunal.

6. According to the Union on whose behalf the contentions were made by Shri Subhas Naik that when ex-gratia grant was paid to every worker how this particular worker Shri Babli Vernekar was isolated and this action of the management in isolating this worker amounts to discrimination between workers and workers. While explaining the position Shri Talaulikar for the management did submit before me that the workman cannot claim ex-gratia as of right unlike the bonus which is a statutory obligation on the part of management. According to Shri Talaulikar the management has paid the ex-gratia or to put it correctly agreed to pay the ex-gratia to the workers as an incentive to the existing workers so that they can work well in future. According to him even though the decision of payment of bonus and ex-gratia was taken in January, 1984 the bonus was paid immediately but ex-gratia was paid between Jan. to March only to those workers who were on the roll on the date of decision and this does not apply to the Party I/Workman who admittedly retired from service in August, 1983 and as he was no more in service he was not entitled to ex-gratia which was declared by the management in January, 1984. On the point of the decision being taken in January, 1984 he relies on a letter sent by the Union on 27th Jan., 1984 and there is no dispute on this point. Hence the dispute is narrowed down to a point as to whether the Party I/Workman can claim ex-gratia as of right and that too when it was declared after his retirement in August, '83, and whether retrospective effect could be given to it to award the ex-gratia for the year 1982-83 during which he was admittedly in the services of the Opponent.

7. While considering the legal position in this regard I have to go through the observations of different Courts regarding the payment of Bonus and ex-gratia and the difference between bonus and ex-gratia and the question whether the workman can claim ex-gratia as of right. It is no doubt true that the stake in this case is very small and ordinarily the management should not have gone to the extent of vehemently contesting the claim which is very small claim comparing to the payment made to all the remaining workers of the concern. Shri Talaulikar did submit before me that this is a fight on principle and the management desires that a final order or a sort of ruling be given to this point for any eventuality in future. In view of this, I propose to deal with this aspect with reference to the case law and I propose to rely on some portion in the book of the author S. B. Rao entitled 'Concept of Bonus' wherein on page 201 some cases are cited with reference to the eligibility of an employee for the payment of bonus and ex-gratia. Shri Talaulikar for the employer Nav-Gomantak Prakashan submitted before me that ex-gratia payment is not a statutory obligation on the part of the management and so it is not ipso facto enforceable in law. There is some truth in what he submits in this regard. The position as regards the payment of bonus is distinguishable from that of payment of ex-gratia. The bonus

is production incentive but ex-gratia is not production incentive but it is paid on account of some festival or as a goodwill and gesture towards the workers to earn industrial peace and settlement in the working of the Company. While the payment of Bonus is enforceable in law, the ex-gratia is not so enforceable. In the book mentioned above I came across certain authorities which throw light on the payment of Bonus and Ex-gratia.

8. About the manner of ex-gratia in the case of management of Bombay Co. Ltd. V/s. Its Workmen reported in 1964 II LLJ, page 109 AIR 1964, Supreme Court, page 1770; the Supreme Court has observed that "an implied term of employment cannot be inferred where the employer makes it clear at the time of payment that he was making ex-gratia payment and it shall not constitute precedent for future years. However, mere use of the word "ex-gratia" does not exclude inference of implied agreement. It is the total situation and circumstances which should be taken into account. One such circumstance which shows that the payments of ex-gratia would be to prove that when payments were made, it was made known to workers that it was ex-gratia. More than that the circumstances, that is, the entire evidence should indicate that the payments were not made as a matter of obligation but to purchase peace or to avert a threatened strike on unjustifiable grounds or for any other like reasons. The consensus of the legal opinion is that the payment of ex-gratia is not made as a matter of obligation but it is an offer by the Company as a bargain for purchasing peace or to avert any other dead-lock.

9. Considering the distinction between bonus and ex-gratia it appears that the worker would be entitled to bonus as of right but he cannot claim ex-gratia as of right. In the Supreme Court case reported in 1962 Part I, LLJ page 233, it was observed that "in case the dismissal is not approved (it was a case regarding a servant who was dismissed from service and who was subsequently ordered to be reinstated) it means the dismissal had not taken place at all and the employee will be presumed to be in service in the eye of the law; he will be entitled to receive bonus". In the second authority the relevant observations read thus: "In reinstating with back wages, the employee is entitled to receive bonus, if the employees in the same category were paid bonus and ex-gratia; while the applicant employed was not given this payment". The above two rulings pertain to a dismissed employee who was subsequently directed to be reinstated. Naturally the servant who was dismissed could not have rendered service as the order of dismissal was in force and so he was entitled to the bonus as well as ex-gratia. In the instant case the position is some what favourable to the workman in as much as he was very much in service for the period for which the ex-gratia was declared by the management. It is no doubt true that the ex-gratia was declared in Jan., '84 but the same was for the period 1981-82 and 1982-83. The present workman retired in August, 1983. Hence he was in service and apparently he was entitled to the bonus as well as ex-gratia. The management had no doubt stated that the ex-gratia should be paid to those workers who were on the roll of the Company on 31-12-1983. Be it so as it may, the position of the present workman cannot be separated from the other workman who were paid the ex-gratia and this workman along was isolated and was refused the ex-gratia to him. Shri Subhas Naik representing the Union did submit before me that in a similar case the position was considered by the Supreme Court in the case of The Hindustan Construction Co. Ltd. Versus Shri G. K. Patankar and Another reported in 1976 Supreme Court Cases (L&S) page 122. In that case the Construction Co. had granted ex-gratia to the workers numbering about 30,000 workmen in all its branches and the amount paid was Rs. 20 lakhs. The Company however, refused to pay ex-gratia to the workers of its Head Office and the benefit of ex-gratia to the workers of the Head Office of the Co. would cost the Co. with only Rs. 1 lakh or so. When the Company refused to pay the ex-gratia to workers, the workers of the Head Office approached the Tribunal and the Industrial Tribunal agreeing with the contentions of the workers that what was paid to the employees at the branch offices as ex-gratia amount was in fact nothing but additional bonus. The Tribunal held that the demand was legal and proper and directed the payment of bonus to the workers of the Head Office @ of which it has been paid to the workers at the branch offices. When the order of the Tribunal was challenged before the Bombay High Court the High Court summarily rejected the petition with the following observations "The award of the tribunal had not occasioned a failure of justice. While the company paid Rs. 20 lakhs as additional relief at the branches it incurred an expenditure of only

Rs. 1 lakh at the head office. This was justified on the principle of uniformity which serves to maintain industrial peace". The matter then was taken to the Supreme Court by the Construction Co. and the Supreme Court dismissed the appeal observing that the High Court found the extension of the benefit of the workers at the Head Office justified on the principle of uniformity which in this case serves to maintain industrial peace. The Supreme Court further observed that "We are therefore not inclined to disturb the order made by the High Court which we consider reasonable and proper in the circumstances of the case even if the order complained of "might suffer from some infirmity". Logically, the superior courts observed that the Industrial Tribunal might be probably wrong in equating the bonus and ex-gratia by treating them at par but at the same time in view of the principle of uniformity the workers of the head office should not be kept away from the ex-gratia on the principle of uniformity. I feel that the above observations do apply aptly to the facts in the present case and considering the principle of uniformity I see no reason why the single worker should be isolated to deprive him of the payment when others are awarded with the same. Hence, I feel that the management ought to have paid the ex-gratia to the Party I/Workman because other workmen of the Company were paid the ex-gratia for the relevant year 1982-83. I therefore answer the above issue accordingly and hold that the action of the management of M/s. Nav Gomantak Prakashan, Daily Rastramat, Margao, Goa in non-payment of 4.16 percent ex-gratia grant to the Party I/Workman for the year 1982-83 is not justified and I hold that the workman is entitled to the relief of the grant of the ex-gratia. In the result, I pass the following order.

## ORDER

The Party II/Employer namely the management of M/s. Nav-Gomantak Prakashan, Daily Rastramat at Margao, Goa, do grant the ex-gratia to Party I/Workman Shri Babli Vernekar for the accounting year 1982-83 at 4.16 percent. The issue is answered accordingly and this award be reported to the Government.

There shall be no order as to costs.

S. V. Nevagi  
Presiding Officer  
Industrial Tribunal

---

Law (Legal and Legislative Affairs) Department

---

Notification

No. 12/41/81/LGL

In partial modification of the Government Notification of even number dated 18-11-1987, the Government of Goa is pleased to extend the term of the Committee on Personal Laws by a further period of six months with effect from 28-5-1988.

By order and in the name of the Governor of Goa.

P. V. Kadnekar, Under Secretary (Drafting).

Panaji, 20th May, 1988.